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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCOS ALLAN RAMOS,

Defendant and Appellant.

2d Crim. No. B237976
(Super. Ct. No. 1335443)
(Santa Barbara County)

Marcos Allan Ramos appeals a judgment following conviction of unlawful possession of a firearm, and unlawful possession of ammunition, with findings that he suffered a prior serious felony strike conviction and served two prior prison terms. (Former Pen. Code, §§ 12021, subd. (a)(1), 12316, subd. (b)(1); Pen Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)¹ We decide that the trial court properly denied Ramos's motion to suppress evidence pursuant to section 1538.5, and affirm.

FACTS AND PROCEDURAL HISTORY

In the afternoon of February 23, 2010, Santa Barbara police officers responded to a report of a "trespass in progress" in apartment No. 12 at 33 1/2 Parker Way. Detective Kenneth Kushner saw a dark-colored duffel bag with shoes resting atop the bag outside the door of apartment No. 12. No one was present in the hallway of the apartment building; a resident of apartment No. 11 opened her door, however, and began

¹ All further statutory references are to the Penal Code unless otherwise stated.

to leave her apartment. Kushner recognized the resident as Maria G., and knew that Ramos was the father of her child. He instructed her to return to her apartment and close the door.

The police officers slightly moved the duffel bag to enter apartment No. 12. The door to the apartment was locked, and an officer used a knife to open the door. After entering and announcing their presence, the officers saw Ramos standing inside the apartment. He immediately fled into a bedroom that was occupied by another man, Robert Harper.

The police officers saw a syringe cap and aluminum can containing a burnt substance on the kitchen counter. In the bedroom, they found a syringe containing a dark substance (later stipulated to be heroin) that was "ready for use" and a black baseball cap with the initial "P." The officers recognized Ramos and knew him to be a member of the criminal street gang, "Westside Projects."² The officers later recovered a photograph from Ramos's cellular telephone depicting him wearing the "P" baseball cap.

The police officers arrested Ramos and Harper, who appeared to be under the influence of heroin. They seized the duffel bag and searched it at the police station. Inside the bag they found four letters from prison inmates addressed to Ramos, a .22 caliber firearm wrapped inside a bandana, men's clothing, and ammunition contained within a smaller zippered bag, among other things.

During his later custody at county jail, Ramos admitted to his cellmate, Anthony Melena, that he entered the vacant apartment to use heroin. He also stated to Melena that he removed his fingerprints from his firearm before placing it in his duffel bag. Melena and Ramos previously had served time in prison together and shared the "Sureno" criminal street gang affiliation.

The .22 caliber firearm contained ammunition and was in working condition. A DNA analysis of the firearm surface revealed DNA consistent with that of Ramos as well as three other persons and that Ramos "was the major contributor" to that

² Ramos has facial tattoos declaring his gang affiliation.

mixture. Fingerprints on the letters contained in the duffel bag were not those of Ramos or Harper.

Motion to Suppress Evidence

Ramos filed a motion to suppress evidence of the firearm and ammunition found in the duffel bag. The trial court held an evidentiary hearing during which retired Detective Bernie Gaona and Detective Kushner testified.

Gaona testified that police officers had received information that trespassers were inside apartment No.12 at 33 1/2 Motor Way. Gaona spoke with the building owner who informed him that the apartment was vacant and "[n]o one had permission to be in that apartment." The building owner authorized Gaona to enter the apartment and remove any trespassers. Gaona stated that apartment No. 12 was one of eight apartments along with a tenant laundry room in the left wing of the building. When they approached apartment No. 12, they found a duffel bag with a pair of white shoes resting against the wall slightly to the left of the apartment door. The outside of the bag did not contain owner identification. Several apartment doors were open, but no one was in the hallway. Gaona described the duffel bag as "sitting there unattended."

The police officers opened the lock on the apartment door, entered the apartment, and found Ramos, Harper, heroin, and heroin paraphernalia. Gaona partially unzipped the duffel bag, immediately saw a letter addressed to Ramos, closed the bag, and carried it to the police station.

Gaona asked Ramos if he owned the duffel bag. Ramos replied, "[N]o, . . . ask the neighbors." Harper also stated that he did not own the bag.

Kushner testified that he knew Ramos from prior police contacts and knew that he was a member of the "Projects" criminal street gang. Kushner stated that he searched the duffel bag at the police station without first obtaining a search warrant.

The trial court denied the suppression motion, stating that the search of the duffel bag was reasonable and that Ramos lost his right of privacy in the bag by disclaiming ownership.

Conviction and Sentencing

The jury convicted Ramos of unlawful possession of a firearm (count 2), and unlawful possession of ammunition (count 4). (Former §§ 12021, subd. (a)(1), 12316, subd. (b)(1).) It could not agree upon the charged count of possession of heroin, and acquitted him of the charged count of possession of heroin and a firearm. (Health & Saf. Code, §§ 11350, subd. (a), 11370.1, subd. (a).) In a separate proceeding, Ramos admitted and the trial court found that he suffered a prior serious felony strike conviction and served two prior prison terms. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)

The trial court sentenced Ramos to an eight-year prison term, consisting of an upper six-year term for count 2, plus a one-year term for each of the two prior prison term enhancements. The court imposed a six-year term for count 4 and ordered that Ramos serve the term concurrently to count 2. The court imposed a \$200 restitution fine, a \$200 parole revocation restitution fine (stayed), and awarded Ramos 678 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45.) The court also granted the prosecutor's motion to dismiss count 1 (possession of heroin). (§ 1385.)

Ramos appeals and contends that the trial court erred by denying his motion to suppress evidence of the contents inside the duffle bag.

DISCUSSION

Ramos argues that he had a reasonable expectation of privacy in the duffel bag in view of the circumstances. (*People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1132 ["A shoulder bag reposing on the floor of an occupied residence hardly presents the indicia of abandonment"].) He adds that his disclaimer of ownership is not dispositive of his Fourth Amendment claim, asserting that the record does not reflect that he had been advised of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 before disclaiming ownership.

In reviewing a motion to suppress evidence, we defer to the trial court's express and implied findings that are supported by substantial evidence. (*People v. Tully* (2012) 54 Cal.4th 952, 979.) As the finder of fact, the trial court determines the

credibility of witnesses, resolves conflicts in testimony, weighs the evidence, and draws factual inferences in deciding whether a search is reasonable within the Fourth Amendment. (*Ibid.*) The reviewing court exercises its independent judgment, however, to determine the legality of a search and seizure. (*Ibid.*) As a general rule, the trial court's ruling will be upheld "if there is any basis in the record to sustain it." (*People v. Marquez* (1992) 1 Cal.4th 553, 578; *People v. Hua* (2008) 158 Cal.App.4th 1027, 1033 ["We affirm the trial court's ruling if correct under any legal theory"].)

The threshold inquiry in a Fourth Amendment analysis is "whether the defendant, rather than someone else, had a reasonable expectation of privacy in the place searched or the items seized." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3; *Rakas v. Illinois* (1978) 439 U.S. 128, 143.) Generally, an item left unattended in a public area evidences the relinquishment of any reasonable expectation of privacy. "The test for abandonment in the search and seizure context is distinct from the property law notion of abandonment; it is possible for a person to retain a property interest in an item, but nonetheless to relinquish his or her reasonable expectation of privacy in the object." (*U.S. v. Thomas* (D.C. Cir. 1989) 864 F.2d 843, 845 [defendant left gym bag containing firearm and drugs in hallway of apartment building].)

There may be instances where the mere act of setting down a bag would not constitute relinquishing a reasonable expectation of privacy therein. (*U.S. v. Thomas, supra*, 864 F.2d 843, 846.) Here, however, Ramos left his unmarked duffel bag unattended outside a vacant apartment in a hallway containing eight apartments (two with open doorways) and a tenant laundry room. Although he may have intended to retrieve his bag later, his ability to do so depended upon the fortuity that others with access to the hallway would not disturb his bag left unattended and out of his sight. (*Id.* at p. 846, fn. 5.)

Moreover, Ramos chose to deny knowledge of the duffel bag and suggested that police officers question neighbors. In essence, he relinquished any reasonable expectation of privacy in the duffel bag when he denied owning it. (*People v. Mendoza, supra*, 176 Cal.App.3d 1127, 1133.) "It is settled law that a disclaimer of proprietary or

possessory interest in the area searched or the evidence discovered terminates the legitimate expectation of privacy over such area or items.'" (*People v. Dasilva* (1989) 207 Cal.App.3d 43, 48.)

Ramos did not raise the issue of his *Miranda* advisements in the trial court. The evidence at the suppression hearing does not reflect whether police officers stated the advisements when they asked Ramos if the duffel bag belonged to him. We do not consider the issue for the first time on appeal. (*People v. Mattson* (1990) 50 Cal.3d 826, 854.)

In sum, the trial court did not err by denying Ramos's motion to suppress evidence because he did not have a reasonable expectation of privacy in the duffel bag.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Frank J. Ochoa, Judge
Superior Court County of Santa Barbara

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Defendant and Appellant.

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